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SERVICE DATE – DECEMBER 26, 2001

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 34126

PARKSIERRA CORPORATION (SUCCESSOR-IN-INTEREST TO CALIFORNIA
NORTHERN RAILROAD COMPANY LIMITED PARTNERSHIP)–LEASE AND
OPERATION EXEMPTION–SOUTHERN PACIFIC TRANSPORTATION COMPANY

STB Finance Docket No. 34127

PARKSIERRA CORPORATION (SUCCESSOR-IN-INTEREST TO CALIFORNIA
NORTHERN RAILROAD COMPANY LIMITED PARTNERSHIP)–TRACKAGE RIGHTS
EXEMPTION–NORTH COAST RAILROAD AUTHORITY¹

Decided: December 17, 2001

ParkSierra Corporation (ParkSierra), successor-in-interest to California Northern Railroad Company Limited Partnership (CFNR),² has filed petitions under 49 U.S.C. 10502 to exempt, retroactively or prospectively: (1) its lease and operation of the “Vineburg Lead” (or Lead) from the prior approval requirements of 49 U.S.C. 10901 and 10902; and (2) its acquisition of incidental trackage rights over the “Schellville Segment” (or Segment) from the prior approval requirements of 49 U.S.C. 11323. We will dismiss the petition for exemption to lease and operate the Vineburg Lead and grant an exemption for ParkSierra to acquire incidental trackage rights over the Schellville Segment.

¹ These proceedings are not consolidated; they are being considered together for administrative convenience.

² CFNR, a Class III carrier, and its affiliates were incorporated into ParkSierra, a Class II carrier, on or about September 20, 2000. See ParkSierra Corporation, Arizona & California Railroad Company Limited Partnership, and California Northern Railroad Company, Limited Partnership–Corporate Family Transaction Exemption, STB Finance Docket No. 33932 (STB served Sept. 27, 2000).

BACKGROUND

CFNR became a carrier on or about August 27, 1993, after having agreed to lease and operate approximately 354 miles of rail line in the State of California.³ The lease was granted by Southern Pacific Transportation Company (SPT) and included: (1) a portion of its Northwestern Pacific Line (NWP Line) from milepost NWP 142.50 at or near Outlet, south until making a U-turn back to Schellville, milepost NWP 40.60 (SP 72.50), and then east to Lombard, milepost SP 62.00; (2) a portion of its Northern California Line running northeast from Lombard to milepost SP 186.40 at or near Tehama; and (3) related branch lines, sidings, and connecting tracks. See California Northern Railroad Company Limited Partnership–Lease and Operation Exemption–Certain Lines of Southern Pacific Transportation Company, Finance Docket No. 32353 (ICC served and published at 58 FR 51845 on Oct. 5, 1993) (CFNR Lease).⁴

The Vineburg Lead extends 3.87 miles north from the point of connection with the NWP Line at or near Schellville, milepost NWP 40.38 (SP 72.8), through Vineburg, milepost NWP 42.30, to the end of the track at or near Sebastiani, milepost NWP 44.25. It was abandoned by Northwestern Pacific Railroad Company (NWP), an SPT affiliate, in 1986. The applicable tariffs were canceled, but a 1.7-mile segment remained in use to switch cars for the only shipper on the Lead, who was located at Vineburg. This operation continued until the NWP Line was leased to CFNR in 1993. ParkSierra states that CFNR continued to serve that shipper under the lease. According to ParkSierra, there was no reference to the Lead in the lease or the notice of exemption in CFNR Lease, because neither carrier thought that regulatory authority was required by CFNR to serve the Lead. ParkSierra claims that the Lead was treated like any of the other sidings, industry leads, yard track, and spurs that were operated by CFNR but were not expressly named in the lease.

³ The lease is for the 20-year period extending through September 30, 2013, and may be extended for successive 10-year terms unless terminated by the parties. See North Coast Railroad Authority–Purchase Exemption–Southern Pacific Transportation Company, STB Finance Docket No. 32788 (STB served and published at 61 FR 11469 on Mar. 20, 1996) (NCRA Purchase), slip op. at 2, n.4.

⁴ At the same time, a notice of exemption was served for ParkSierra and Mess. David Parkinson and William Frederick to continue in control of CFNR upon its becoming a rail carrier. See David Parkinson, William Frederick, and ParkSierra Corporation–Continuance in Control Exemption–California Northern Railroad Company Limited Partnership, Finance Docket No. 32351 (ICC served and published at 58 FR 51846 on Oct. 5, 1993).

SPT amended the lease with CFNR effective December 20, 1995, specifically to include the Vineburg Lead.⁵ Apparently this was done in anticipation of SPT's division of the NWP Line into two segments and sale of its ownership interest in those segments to two public authorities, the North Coast Railroad Authority (NCRA) and the Northwestern Pacific Railroad Authority (NWPRA). The lease amendment allegedly was intended to clarify that the Lead was not to be part of the sale to the authorities. ParkSierra states that no regulatory filing was made for the lease amendment in the "belief that an abandoned line, part of which was operated as an industrial lead to switch cars for one shipper, did not require regulatory authority." ParkSierra Petition at 4.

The two authorities completed the purchase of their respective portions of the NWP Line in 1996, subject to CFNR's lease and operating rights, and obtained all of SPT's rights and obligations under its amended lease with CFNR.⁶ Later that year, NCRA, d/b/a Northwestern Pacific Railroad, entered into an agreement to acquire and operate CFNR's leasehold interest in the NWP Line from Outlet to Lombard. NCRA also acquired a surface freight and passenger easement over NWPRA's portion of the NWP Line. NCRA was to grant back to CFNR incidental trackage rights to permit CFNR to continue operating the Schellville Segment, a 10.5-mile portion of the NWP Line between Schellville, milepost NWP 40.60 (SP 72.50), and Lombard, milepost SP 62.00. The Segment gave CFNR access to the Vineburg Lead and to the rest of the NWP Line west of Schellville. NCRA filed a petition for exemption to effect the agreement on May 10, 1996. See North Coast Railroad Authority—Operation and Acquisition Exemption—California Northern Railroad Company, Northwestern Pacific Railroad Authority, and Golden Gate Bridge, Highway and Transportation District, STB Finance Docket No. 32943 (STB served Dec. 18, 1996) (NCRA Petition).

⁵ The lease amendment refers to the Vineburg Lead as the Sonoma Branch and states that "[w]hile the Sonoma Branch is not part of the Leased Premises, [CFNR] wishes to continue its switching services on the Sonoma Branch." ParkSierra Petition, Exhibit B.

⁶ See NCRA Purchase (extending 74.30 miles between milepost NWP 142.50 at or near Outlet and milepost NWP 68.20 at or near Healdsburg); and Northwestern Pacific Railroad Authority—Acquisition Exemption—Former Northwestern Pacific Railroad Line from Southern Pacific Transportation Company and Golden Gate Bridge, Highway and Transportation District, Finance Docket No. 32910 (STB served and published at 61 FR 25011 on May 17, 1996) (extending 66.85 miles from milepost NWP 68.20 at or near Healdsburg, through Schellville, to milepost SP 63.40 at or near Lombard).

CFNR granted interim trackage rights to NCRA effective July 22, 1996, to permit NCRA to begin operating from Outlet to Schellville.⁷ Then, on September 5, 1996, NCRA filed a notice of exemption to effect more expeditiously the agreement in NCRA Petition. See North Coast Railroad Authority–Lease and Operation Exemption–California Northern Railroad Company, Northwestern Pacific Railroad Authority, and Golden Gate Bridge, Highway and Transportation District, STB Finance Docket No. 33115 (STB served and published at 61 FR 50902 on Sept. 27, 1996) (NCRA Exemption). Unlike the petition filed in NCRA Petition, however, the notice in NCRA Exemption failed to include a return grant of incidental trackage rights to permit CFNR to continue operating over the Schellville Segment. After NCRA Exemption was served, the petition for exemption in NCRA Petition was dismissed at NCRA’s request in the December 18, 1996 decision.

ParkSierra states that the NWP Line was operated by NCRA and CFNR until the Federal Railroad Administration (FRA) shut the line down for safety reasons on November 27, 1998. According to ParkSierra, CFNR never resumed operations over the Schellville Segment. NCRA resumed operations over the NWP Line in February 2001, but those operations ceased on September 14, 2001. RailAmerica, Inc. (RailAmerica), a noncarrier holding company, now seeks to acquire control of ParkSierra.⁸

In STB Finance Docket No. 34126, ParkSierra asks us to find that the Vineburg Lead was excepted track under former 49 U.S.C. 10907(b) of the Interstate Commerce Act⁹ and that regulatory authority was not required for its lease and operation. In the alternative, ParkSierra

⁷ See North Coast Railroad Authority–Trackage Rights Exemption–California Northern Railroad Company, STB Finance Docket No. 32994 (STB served and published at 61 FR 37792 on July 19, 1996) (the interim trackage rights did not include the Schellville Segment, which CFNR continued to operate exclusively).

⁸ On November 28, 2001, RailAmerica filed a petition for exemption to acquire control of ParkSierra and to continue in control of ParkSierra Acquisition Corporation, RailAmerica’s wholly owned subsidiary. See RailAmerica, Inc.–Control Exemption–ParkSierra Acquisition Corporation and ParkSierra Corporation, STB Finance Docket No. 34100. In advance of the filing, RailAmerica was granted a protective order in decisions that were served on October 1, 2001, and October 15, 2001.

⁹ Section 10907(b) provided that, “[t]he Commission does not have authority . . . over the . . . the construction, acquisition, operation, abandonment, or discontinuance of spur, industrial, team, switching, or side tracks if the tracks are located, or intended to be located, entirely in one State. . . .” The ICC Termination Act of 1995, Pub. L No. 104-88, 109 Stats. 803, enacted on December 29, 1995 and effective on January 1, 1996, retained this provision but eliminated the one State requirement. See 49 U.S.C. 10906.

asks us to exempt CFNR's lease and operation of the Vineburg Lead either retroactively to the effective date of CFNR Lease or prospectively. In STB Finance Docket No. 34127, ParkSierra asks us to exempt CFNR's acquisition of trackage rights over the Schellville Segment either retroactively to the effective date of NCRA Exemption or, in the alternative, prospectively. If prospective relief is granted in either or both proceedings, ParkSierra requests that it be accompanied by a statement that no enforcement action would be pursued for CFNR's failure to obtain prior approval or an exemption. ParkSierra states that the proposed sale to RailAmerica cannot go forward unless the requested relief is granted.

DISCUSSION AND CONCLUSIONS

1. STB Finance Docket No. 34126. The Interstate Commerce Commission (ICC), our predecessor, granted NWP's application to abandon the Vineburg Lead in Northwestern Pacific Railroad Company—Abandonment—in Sonoma County, CA, Docket No. AB-14 (Sub-No. 5) (ICC served June 11, 1986) (NWP Abandonment).¹⁰ Once the abandonment was consummated, the Vineburg Lead was no longer part of the interstate rail system and was no longer subject to ICC jurisdiction. See, e.g., Application Proc.—Construct, Acq. or Oper. R. Lines, 365 I.C.C. 516, 518 (1982). As such, the Vineburg Lead could be transferred to another entity without ICC approval, as long as the operations conducted since the abandonment were consistent with the indicia of excepted track, 49 U.S.C. 10907(b).

There is no single test of what constitutes excepted track. Like the ICC, we have adopted a case-by-case approach, looking to the line's physical characteristics, intended use, its relationship to the rail system, and history of the track, to determine whether it is excepted from our jurisdiction. Our decisions have relied on specific indicia including: the length of the line; whether it serves more than one shipper; whether it is stub-ended; whether it is main line or only ancillary to operations; whether it was built to invade another railroad's territory; whether the shipper is located at the end of the line; whether there is regularly scheduled service; traffic volume; who owns and maintains the line; whether the line was constructed with light-weight rail; the condition of the line; what the line is used for (i.e., switching, loading, and unloading); and whether there are stations on the line. See, e.g., Chicago SouthShore & South Bend Railroad—Petition for Declaratory Order—Status of Track at Hammond, IN, STB Finance Docket No. 33522 (STB served Dec. 17, 1998), slip op. at 4; and Valley Feed Company v. Greater Shenandoah Valley Development Authority d/b/a Shenandoah Valley Railroad Company, No. 41069 (ICC served Dec. 21, 1995), slip op. at 6.

¹⁰ NWP was described as "a class III railroad and part of a rail system that includes [SPT]." See NWP Abandonment, slip op. at 1.

Although the Vineburg Lead historically was a regulated line, it ceased to be regulated once the NWP Abandonment was consummated. The limited use that was subsequently made of the Lead did nothing to change its status as unregulated track. This use was confined to a 1.7-mile segment, less than one-half of the line. The segment was used to switch cars to the Lead's only shipper at milepost NWP 42.30 at or near Vineburg, who used the Lead to unload cars. Minimal use was made of the 1.7-mile segment. The shipper had reduced its reliance on rail service and was receiving only 25 carloads annually. Id. Cars were delivered on an as-needed basis as there was no need for regularly scheduled service. The Lead was a small, stub-ended line with no stations. It was constructed of light weight rail and was in poor condition. The ICC stated that "its continued use would inevitably require the replacement of the rail (mostly 75-pound rail at the end of its life cycle) and ties (at a rate of 750 to 1,000 ties per mile), as well as a complete surfacing." Id.

The balance of factors clearly supports a finding that the Vineburg Lead was operated as unregulated spur or industrial track serving a single shipper from the time it was abandoned in 1986 through October 1993 when CFNR and SPT entered into the lease. Thus, the Lead was excepted track, and, as a consequence, did not require ICC approval or an exemption for its acquisition by CFNR, a noncarrier. Thus, ParkSierra's petition for exemption pertaining to this track will be dismissed as unnecessary.

2. STB Finance Docket No. 34127. CFNR operated the Schellville Segment from the time it leased the NWP Line in 1993 until November 27, 1998, when the NWP line was shut down by the FRA. In 1996, however, CFNR assigned its leasehold interest in the Segment to NCRA and was granted incidental trackage rights in return. The return grant of trackage rights apparently was omitted from the notice of exemption in NCRA Exemption. CFNR continued to operate over the Segment as it had in the past (i.e., serving the single shipper on the Vineburg Lead and interchanging traffic with NCRA), and its failure to obtain prior ICC approval or an exemption for the return grant of trackage rights was not discovered until RailAmerica entered into negotiations to acquire ParkSierra.

The acquisition of trackage rights requires prior approval under 49 U.S.C. 11323(a)(6). Under 49 U.S.C. 10502(a), however, we must exempt a transaction or service from regulation if we find that: (1) continued regulation is not necessary to carry out the rail transportation policy of 49 U.S.C. 10101; and (2) either (a) the transaction or service is limited in scope; or (b) regulation is not needed to protect shippers from the abuse of market power. The prior consummation of the transaction does not bar our approval of the trackage rights exemption now. See, e.g., David W. Wulfson, Gary E. Wulfson, Lisa W. Cota, Richard C. Szuch, and Peter A. Szuch—Control Exemption—Clarendon & Pittsford Railroad Company, Green Mountain Railroad Corporation, and Vermont Railway, Inc., STB Finance Docket No. 33607 (STB served Aug. 20,

1998) (Wulfson Control). Similarly, the cessation of trackage rights operations by CFNR in 1998 does not bar our approval of the trackage rights exemption at this time.¹¹

Detailed scrutiny of this transaction is not necessary to carry out the rail transportation policy. Rather, an exemption will promote that policy by minimizing the need for Federal regulatory control over this transaction [49 U.S.C. 10101(2)]; ensuring that a sound rail transportation system will continue to meet the needs of the shipping public [49 U.S.C. 10101(4)]; and fostering sound economic conditions in transportation, ensuring effective coordination among carriers and encouraging efficient management [49 U.S.C. 10101(5) and (9)]. Other aspects of the rail transportation policy will not be adversely affected.

Regulation of the transaction is not needed to protect shippers from the abuse of market power because the grant of trackage rights will not result in a change in rail operations. Given our finding regarding the probable effect of the transactions on market power, we need not determine whether the transaction is limited in scope.

ParkSierra requests that the exemption be given retroactive effect. The evidence demonstrates that the failure to include a reference in NCRA Exemption to the return grant of incidental trackage rights was inadvertent and that no harm resulted to rail employees or the public. The record otherwise shows an absence of any intent to flout the law or of a deliberate or planned violation. See, e.g., Wulfson Control.

Retroactive exemptions, however, are generally to be avoided; see, e.g., Brotherhood of Maintenance of Way Employees and Soo Line System Division, Brotherhood of Maintenance of Way Employees v. Soo Line Railroad Company and Wisconsin Central Ltd., STB Finance Docket No. 32964 et al. (STB served Dec. 22, 1998). A prospective exemption would apparently allow RailAmerica's control transaction to proceed if it is accompanied by a Board statement disclaiming any intent to pursue an enforcement action for the previously unauthorized grant of incidental trackage rights. Because CFNR's failure to obtain prior approval or an exemption for

¹¹ Although CFNR ceased operating the Schellville Segment in 1998, the Segment has not been abandoned. Because ParkSierra could resume operations over the Segment at any time, subject to safety considerations, its request for an exemption is appropriate. See, e.g., Hardeman County Railroad Company, Inc., The Industrial Development Board of Hardeman County, TN, and Bolivar Southern Railroad Company—Abandonment and Discontinuance of Service Exemption—in Hardeman County, TN, Docket No. AB-248X (ICC served Oct. 2, 1985), slip op. at 4.

the return grant of incidental trackage rights was inadvertent and no harm resulted, we will not pursue an enforcement action. Thus, we will grant the requested exemption prospectively.¹²

Under 49 U.S.C. 10502(g), we may not use our exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Under 49 U.S.C. 11326(c), however, we may not impose labor protection for transactions under 49 U.S.C. 11324-25 that involve only Class III rail carriers. While the transaction originally involved only Class III rail carriers, this transaction involves a Class II and a Class III rail carrier. See supra note 2. As a consequence appropriate labor protective conditions must be imposed under 49 U.S.C. 11326(b). Any employees affected by the trackage rights will be protected by the labor protection arrangements provided at section 11326(b).

Grants of trackage rights are exempt from the environmental reporting requirements under 49 CFR 1105.6(c)(4) if they will not result in any significant change in carrier operations. Similarly, grants of trackage rights are exempt from the historic reporting requirements under 49 CFR 1105.8(b)(3) if they will not substantially change the level of maintenance of railroad properties.

This action will not significantly affect either the quality of the human environment or conservation of energy resources.

It is ordered:

1. ParkSierra's petition for exemption in STB Finance Docket No. 34126 is dismissed.
2. In STB Finance Docket No. 34127, ParkSierra is exempted under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 11323-25 for its acquisition of incidental trackage rights over the Schellville Segment as discussed above, subject to the labor protection arrangements provided at 49 U.S.C. 11326(b).
3. Notice of the exemption in STB Finance Docket No. 34127 will be published in the Federal Register on December 26, 2001.

¹² ParkSierra requests an accelerated effective date. Given the circumstances of this case, we will allow the exemption to become effective 15 days after service of this decision.

4. This decision will be effective on January 10, 2002. Petitions to stay must be filed by January 7, 2002. Petitions to reopen must be filed by January 22, 2002.

By the Board, Chairman Morgan, Vice Chairman Clyburn, and Commissioner Burkes.

Vernon A. Williams
Secretary